

HUMAN SERVICES BOARD

INTRODUCTION

FINDINGS OF FACT

2. On or about December 9, 2009, the petitioner's husband's employer unilaterally terminated insurance coverage

for its employees. Shortly thereafter, the petitioner applied for VHAP coverage for her husband.

3. The Department maintains that it initially granted the petitioner's application in error. In January 2010 the Department notified the petitioner that her husband's VHAP would close because he had received employer-sponsored insurance within the previous twelve months.

4. Petitioner requested a fair hearing on or about January 29, 2010. Her husband has received continuing VHAP benefits pending the outcome of the fair hearing.

ORDER

The Department's decision is affirmed.

REASONS

The Vermont Health Access Plan (VHAP) was created to provide health care coverage "for uninsured or underinsured low income Vermonters." 33 V.S.A. § 1973(b). When the Legislature adopted VHAP, a key concern was preventing employers from ending their health insurance programs and dumping their employees into the state program. As a result, the Legislature defined "uninsured" in a way to supposedly prevent this from happening through provisions excluding eligibility for those with employer health sponsored plans

within twelve months of applications in most cases. 33

V.S.A. § 1973(e)(2)(3); W.A.M. § 5312.

The obvious (and presumably unforeseen) problem with this approach is the recent economic downturn, which has forced many employers to make drastic personnel decisions, and forced their employees to "accept" cutbacks in pay and/or benefits. This appears to be such a case.

However, despite what-may-well-be-the-unintended consequences of the "twelve-month rule" vis-à-vis the recession, there is no question that the Department has correctly followed the above statutory guidelines for VHAP eligibility. Unfortunately for the petitioner and her husband, any remedy must lie with the legislature.¹ The Board is simply not empowered to carve out exceptions to statutes and regulations based on economic events or the personal circumstances, however sympathetic, of certain recipients. Inasmuch as the Department has correctly applied the regulations its decision must be affirmed. 3 V.S.A. § 3091(d), Fair Hearing Rule No. 1000.4D.

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¹At the hearing, the petitioner was advised to contact her state legislators in this regard.